

C.2/Blue Paper No.14  
7 May 1975

Original: ENGLISH

SECOND COMMITTEE: FOR THE USE  
OF THE INFORMAL CONSULTATIVE GROUP  
ON INNOCENT PASSAGE

CONSOLIDATED TEXT ON INNOCENT PASSAGE (Provisions 24 to 46 in A/CONF.62/C.2/WP.1)

Subsection A. Rules applicable to all ships

Provision 24<sup>1/</sup>

[Right of innocent passage through the territorial sea]

Provision 25<sup>2/</sup>

1. Passage means navigation through the territorial sea for the purpose of:
  - (a) traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or
  - (b) proceeding to or from internal waters or a call at such a roadstead or port facility.
2. Innocent passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or by distress or for the purposes of rendering assistance to persons, ships or aircraft in danger or distress. Passage shall otherwise be continuous and expeditious.

Provision 27<sup>3/</sup>

1. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with these articles and with other rules of international law.
2. Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State, if in the territorial sea it engages in any of the following activities:

- (a) any threat or use of force against the territorial integrity or political independence of the coastal State or in any other manner in violation of the Charter of the United Nations;
- (b) any exercise or practice with weapons of any kind;

<sup>1/</sup> This provision is subject to further negotiation.

<sup>2/</sup> Incorporating provisions 26 and 28.

<sup>3/</sup> Incorporating provision 29, formula A, paragraph 2.

GE.75-65300

State Dept. review completed

C.2/Blue Paper No.14  
page 2

- (c) any act aimed at collecting information to the prejudice of the defence or security of the coastal State;
  - (d) any act of propaganda aimed at affecting the defence or security of the coastal State.
  - (e) the launching, landing, or taking on board of any aircraft;
  - (f) the launching, landing or taking on board of any military device;
  - (g) the embarking or disembarking of any person, currency or commodity contrary to the customs, fiscal or sanitary regulations of the coastal State;
  - (h) any act of intentional pollution, contrary to the provisions of the present Convention;
  - (i) the carrying on of research or survey activities of any kind;
  - (j) any act aimed at interfering with any systems of communication of the coastal or any other State;
  - (k) any act aimed at interfering with any other facilities or installations of the coastal State;
  - (l) any other activity not having a direct bearing on passage.
3. The provisions of paragraph 2 shall not apply to any activities carried out with the prior authorization of the coastal State or in the case of any of the activities referred to in sub-paragraphs (e) to (l), as are rendered necessary by force majeure or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress. In such cases the foreign ship shall, as appropriate, inform the authorities of the coastal State as promptly as possible of the action taken.
4. Passage of foreign fishing vessels shall not be considered innocent if they do not observe such laws and regulations as the coastal State may make and publish in order to prevent these vessels from fishing in the territorial sea.

Provision 27A (formerly provision 30)

Submarines and other underwater vehicles are required to navigate on the surface and to show their flag, unless otherwise authorized by the coastal State.

Provision 28<sup>1/</sup>

Provision 29

1. The coastal State may make laws and regulations, in conformity with the provisions of the present Convention and other rules of international law, relating to innocent passage through the territorial sea, in respect of all or any of the following:

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<sup>1/</sup> Incorporated into provision 26.

C.2/Blue Paper No.14  
page 3

- (a) the safety of navigation and the regulation of marine traffic, including the designation of sealanes and the establishment of traffic separation schemes;
  - (b) the protection of navigational aids and facilities and other facilities or installations including those for the exploration and exploitation of the marine resources of the territorial sea and the sea-bed and subsoil thereof;
  - (c) the protection of cables and pipelines;
  - (d) the conservation of the living resources of the sea;
  - (e) the prevention of infringement of the fisheries regulations of the coastal State, including, inter alia, those relating to the stowage of gear;
  - (f) the preservation of the environment of the coastal State, including the territorial sea, and the prevention of pollution thereto;
  - (g) research of the marine environment and hydrographic surveys;
  - (h) the prevention of infringement of the customs, fiscal, immigration, quarantine or sanitary or phytosanitary regulations of the coastal State.
2. Such laws and regulations shall not apply to or affect the design, construction, manning or equipment of foreign ships or matters regulated by generally accepted international rules unless specifically authorized by such rules.
3. The coastal State shall give due publicity to all laws and regulations made by it under the provisions of this article.
4. Foreign ships exercising the right of innocent passage through the territorial sea shall comply with all such laws and regulations of the coastal State and shall at all times, and particularly when using sealanes and traffic separation schemes designated or prescribed by the coastal State under provisions of these articles comply with all generally accepted international regulations relating to the prevention of collisions at sea.

Provision 29A

1. A coastal State may, where it considers it necessary having regard to the density of traffic concentration, require foreign ships exercising the right of innocent passage through its territorial sea to use such sealanes and traffic separation schemes as may be designated or prescribed by the coastal State for the regulation of the passage of ships.
2. Tankers and ships carrying nuclear or other inherently dangerous or noxious substances or materials may be required to confine their passage to such sealanes.
3. A coastal State may from time to time, after giving due publicity thereto, modify the traffic separation schemes, substitute other sealanes for any sealanes previously designated by it under the provisions of this article.

C.2/Blue Paper No.14  
page 4

4. In the designation of sealanes and the prescription of traffic separation schemes under the provisions of this article a coastal State shall take into account:

- (a) the recommendations of competent international organizations;
- (b) any channels customarily used for international navigation; and
- (c) the special characteristics of particular ships and channels.

5. The coastal State shall clearly demarcate all sealanes designated by it under the provisions of this article and indicate them on charts to which due publicity shall be given.

Provision 29B (formerly provision 37)

Foreign nuclear-powered ships and ships carrying nuclear substances shall, when exercising the right of innocent passage through the territorial sea, carry documents and observe special precautionary measures established for such ships by international agreements.

Provision 30<sup>1/</sup>

Provision 31<sup>2/</sup>

1. The coastal State shall not interrupt or hamper the innocent passage of foreign ships through the territorial sea and, in particular, in the application of these articles or of any laws or regulations made under the provisions of these articles, it shall not:

- (a) impose requirements on foreign ships which have the practical effect of denying or prejudicing the right of innocent passage, or
- (b) discriminate in form or in fact against the ships of any State or against ships carrying cargoes to, from or on behalf of any State

2. The coastal State is required to give appropriate publicity to any dangers to navigation, of which it has knowledge, within its territorial sea.

Provision 32<sup>3/</sup>

1. The coastal State may take the necessary steps in its territorial sea to prevent passage which is not innocent

2. In the case of ships proceeding to internal waters or a call at a port facility outside internal waters, the coastal State shall also have the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to internal waters or such a call is subject

1/ This provision is now provision 27A.

2/ Incorporating provision 32

3/ Incorporating provision 34

C.2/Blue Paper No 14  
page 5

Provision 35<sup>1/</sup>

[Suspension of innocent passage]

Provision 35A

1 If a ship exercising the right of innocent passage through the territorial sea does not comply with the laws and regulations concerning navigation, it shall be liable for any damage caused to the coastal State, including its environment and any of its facilities, installations or other property or to any ships flying its flag

2 If in the application of its laws and regulations, a coastal State acts in a manner contrary to the provisions of these articles and loss or damage results to any foreign ship exercising the right of innocent passage through the territorial sea, the coastal State shall compensate the owners of such ship for that loss or damage.

Provision 36<sup>2/</sup>

Provision 37<sup>3/</sup>

Subsection B Rules applicable to merchant ships

Provision 38

1. No charge may be levied upon foreign ships by reason only of their passage through the territorial sea.

2 Charges may be levied upon a foreign ship passing through the territorial sea as payment only for specific services rendered to the ship. These charges shall be levied without discrimination.

Provision 39

1 The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connexion with any crime committed on board the ship during its passage, save only in the following cases:

- (a) if the consequences of the crime extend to the coastal State
- (b) if the crime is of a kind to disturb the peace of the country or the good order of the territorial sea
- (c) if the assistance of the local authorities has been requested by the captain of the ship or by the consular officer of the country whose flag the ship flies; or
- (d) if it is necessary for the suppression of illicit traffic in narcotic drugs and psychotropic substances

1/ This provision is subject to further negotiations

2/ See provision 29A, paragraph 2

3/ This provision is now provision 29B

C.2/Blue Paper No.14  
page 6

2. The above provisions do not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters.
3. In the cases provided for in paragraphs 1 and 2, the coastal State shall, if the captain so requests, advise the consular officer of the flag State before taking any steps, and shall facilitate contact between such officer and the ship's crew. In cases of emergency this notification may be communicated while the measures are being taken.
4. In considering whether or how an arrest should be made, the local authorities shall pay due regard to the interests of navigation.
5. The coastal State may not take any steps on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connexion with any crime committed before the ship entered the territorial sea, if the ship, proceeding from a foreign port, is only passing through the territorial sea without entering internal waters.

Provision 40

1. The coastal State should not stop or divert a foreign ship passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the ship.
2. The coastal State may not levy execution against or arrest the ship for the purpose of any civil proceedings, save only in respect of obligations or liabilities assumed or incurred by the ship itself in the course or for the purpose of its voyage through the waters of the coastal State.
3. The provisions of the previous paragraph are without prejudice to the right of the coastal State, in accordance with its laws, to levy execution against or to arrest, for the purpose of any civil proceedings, a foreign ship lying in the territorial sea, or passing through the territorial sea after leaving internal waters.

Subsection C. Rules applicable to government ships

- (1) Government ships other than warships

Provision 41<sup>1/</sup>

The rules contained in subsections A and B shall apply to government ships operated for commercial purposes.

Provision 42

1. The rules contained in subsection A and in article ... (provision 38) shall apply to government ships operated for non-commercial purposes.
2. With such exceptions as are contained in the provisions referred to in the preceding paragraph, nothing in these articles affects the immunities which such ships enjoy under these articles or other rules of international law.

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<sup>1/</sup> For some delegations, government ships operated for commercial purposes shall enjoy immunity and therefore the measures referred to in provision 40 shall be applied to such ships only with the consent of the flag State.

C.2/Blue Paper No.14  
page 7

(2) Warships

Provision 43

1. For the purposes of the present Convention the term "warship" means a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the Government of the State and whose name appears in the appropriate Service List or its equivalent, and manned by a crew who are under regular armed forces discipline.
2. The rules contained in subsection A shall apply to warships.

Provision 44

1. If any warship does not comply with the laws and regulations of the coastal State relating to passage through the territorial sea and disregards any request for compliance which is made to it, the coastal State may suspend the right of passage of such warship and may require it to leave the territorial sea by such safe and expeditious route as may be directed by the coastal State.

Provision 45

Subject to articles ... (provisions 43, 44 and 46), nothing in these provisions affects the immunities which warships enjoy under these provisions or other rules of international law.

(3) State responsibility for government ships

Provision 46

If, as a result of any non-compliance by any warship or other government ship operated for non-commercial purposes with any of the laws or regulations of the coastal State relating to passage through the territorial sea or with any of the provisions of these articles or other rules of international law, any damage is caused to the coastal State including its environment and any of its facilities, installations or other property or to any ships flying its flag, international responsibility shall be borne by the flag State of the ship causing the damage.